

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 325 of 2000

in

FIRST APPEAL No 8064 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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JASHVANTPURI CHHAGANPURI GOSWAMI

Versus

KANAKPURI GANGAPURI GOSWAMI  
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Appearance:

MR PK JANI for Appellant  
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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE J.M.PANCHAL

Date of decision: 01/08/2000

C.A.V.JUDGMENT : (Per : Panchal,J.)

This appeal, which is filed under Clause 15 of the Letters Patent Appeal, is directed against judgment dated January 20, 2000, rendered by the learned Single Judge, in First Appeal No. 8064/99 by which judgment and decree dated November 1, 1999, rendered by the learned 4th Jt. Civil Judge, (S.D), Mehsana, in Special Civil Suit No.9/96 rejecting the prayer of the appellant for specific performance of agreement to sell, is confirmed.

2. The appellant had filed Special Civil Suit No.9/96 for specific performance of agreement to sell dated December 29, 1995 executed by original defendant no.1 as power of attorney holder of original defendant no.2. We may state that the appellant is a practising lawyer; whereas original defendant no.1, who is his real brother-in-law, is a doctor. The defendant no.2 had filed Regular Civil Suit No.3/96 for cancellation of power of attorney which he had executed in favour of original defendant no.1. Both the suits were consolidated as per the order passed below Exh.96. Having regard to the pleadings of parties, necessary issues for determination were raised by the Trial Court and the parties had led common evidence in support of their respective cases. On appreciation of evidence, the Trial Court held that the agreement to sell dated December 29, 1995 was bogus and not genuine. The Trial Court further deduced that the original defendant no.1 had no authority to execute agreement to sell dated December 29, 1995 in favour of the present appellant. The claim of the appellant that he had paid Rs. 95,000/as consideration to the present appellant was also negatived. Ultimately, by a common reasoned judgment dated November 1, 1999, running into 51 pages, the Trial Court dismissed the suit filed by the appellant and decreed the suit filed by the original defendant no.2. Though common evidence was led and both the suits were decided by common judgment and decree, the appellant preferred First Appeal No. 8064/99 only against the judgment and decree rendered in Special Civil Suit No.9/96. Under the circumstances, the learned Single Judge considered the question whether the appeal was

barred by the principle of res judicata, as the appellant has accepted and not challenged the judgment and decree rendered in Regular Civil Suit No. 3/96. After referring to the decision of the Supreme Court in PREMIER TYRES LIMITED v. KERALA STATE ROAD TRANSPORT CORPORATION, AIR 1993 SC 1202, the learned Single Judge has concluded that the appeal is barred by the principle of res judicata. In view of the above conclusion, the learned Single Judge has summarily dismissed the appeal of the appellant by the impugned judgment, giving rise to present appeal.

3. We have heard the learned counsel for the appellant. The contention that now decree passed in Regular Civil Suit No.3/96 is challenged before the District Court with application for condonation of delay and, therefore, the impugned appeal should be allowed, cannot be accepted. The fact that at the relevant time the judgment rendered in Regular Civil Suit No.3/96 was not challenged by the appellant, is not in dispute. As observed earlier, both the suits were consolidated and parties had led common evidence. A bare perusal of the discussion made by the Trial Court makes it evident that both the suits were inter-related and the finding rendered in one suit was to govern the finding in another suit. Under the circumstances, we are of the considered opinion that the learned Single Judge was justified in considering the question whether the appeal was barred by the principle of res judicata. In PREMIER TYRES LIMITED (supra), the Supreme Court has authoritatively pronounced that where an appeal arising out of connected suit is dismissed on merits, the other cannot be heard and has to be dismissed. What is emphasised in the said decision is that where no appeal is filed from the decree in connected suit, it has the same effect of non-filing of appeal against a judgment or decree and the finality of finding recorded in the connected suit, due to non-filing of appeal, precludes the Court from proceeding with appeal in other suit. We may state that while laying down the above referred to proposition of law, the Supreme Court has relied on the decision rendered in BADRI NARAYAN SINGH v. KAMDEO PRASAD SINGH, AIR 1962 SC 338. In view of the decision of the Supreme Court quoted above, we are of the opinion that no error is committed by the learned Single Judge in dismissing the First Appeal on the ground that the same is barred by the principle of res judicata. The finality of finding recorded in the connected suit i.e. Regular Civil Suit No.3/96 due to non-filing of appeal, would preclude the Court from proceeding with the appeal in other suit. The appeal, therefore, cannot be entertained and is liable to

be dismissed.

For the foregoing reasons, the appeal fails and is summarily dismissed.

(D.M.Dharmadhikari,C.J.)

( J.M.Panchal, J.)

(patel)